

MC/15/4539

Date Received: 24 December, 2015

Location: Land To The East Of Mierscourt Road /South Of Oastview  
Rainham Kent ME8 8JF

Proposal: Construction of 134 dwellings with associated parking, access,  
landscaping and infrastructure works

Applicant: Redrow Homes (South East) Ltd

Agent: Mr J Collins DHA Planning Eclipse House Eclipse Park  
Sittingbourne Road Maidstone, Kent ME14 3EN

Ward Rainham South

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**Recommendation of Officers to the Planning Committee, to be considered and determined by the Planning Committee at a meeting to be held on 1 June, 2016.**

**Recommendation - Approval with Conditions subject to:**

A. A Section 106 Agreement under the terms of the Town and Country Planning Act 1990 to secure the following:

- i. 25% Affordable Housing: 34 dwellings
- ii. Education comprising:
  - i. Nursery School @ £8320 per pupil place (£97,177.60)
  - ii. Primary School @ £8320 per pupil place (£242,611.20)
  - iii. Secondary School @ £11,960 per pupil place (£244,223.20)
  - iv. Sixth Form @ £11,960 per pupil place (£65,780)
  - v. Total: £649,792.
- iii. Transport (A2/Mierscourt junction improvements) comprising:
  - vi. Traffic signal equipment: £49k
  - vii. MOVA equipment (including licensing): £6.5K
  - viii. Removal of guard rail: £6K
  - ix. Civils works (including island remove and crossing widening): £42K
  - x. Sub total: £103,500
  - xi. 10% Contingency: £10,350
  - xii. Total: £113,500
- iv. Open Space: £231,714.10
- v. Local Health Facilities: £62,705
- vi. Birds Disturbance Mitigation: £29,960

vii. Waste & Recycling: £20,829

viii. Community Facilities: £18,319

B. The imposition of the following conditions

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).

- 2 The tree works described in this decision notice corresponds with the attached approved plan.

Reason: For the avoidance of doubt and in the interests of proper planning.

- 3 No development above foundation level shall take place until details and samples of all materials to be used externally have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

- 4 No development above foundation level shall take place until details of measures to minimise the risk of crime, according to the principles and physical security requirements of Crime Prevention through Environmental Design (CPTED), have been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented before the development is occupied and thereafter retained.

- 5 No development above foundation level shall take place until full details of all hard and soft landscaping, boundary treatment and any artefacts to be located within external areas have been submitted to and approved in writing by the Local Planning Authority.

Hard landscaping works shall include all decking, paving and external hard surfacing material (including safe surfacing for play equipment). Minor artefacts and structures shall include play equipment, seating, refuse receptacles, planters, tree grilles and any other decorative feature(s).

Soft landscape works shall include details of planting plans, written specifications (including cultivation and other operations associated with grass and plant establishment and aftercare, schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate. All planting, seeding and turfing comprised in the approved scheme of landscaping shall be implemented during the first planting season following occupation of the buildings or completion of the development, whichever is the earlier. Any trees or plants which within 5 years of planting are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless the Authority gives written consent to any variation.

The boundary treatment details shall include a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the buildings are occupied and shall thereafter be retained. The development shall be carried out in accordance with the approved details.

- 6 A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than small, privately owned, domestic gardens, shall be submitted to the Local Planning Authority for approval in writing prior to the occupation of the development. The landscape management plan shall be carried out as approved.
- 7 No development above foundation level shall take place until details of all external lighting, including for open parking courtyard areas, enclosed parking spaces, any individual covered parking area and areas of communal open space, has been submitted to and approved in writing by the Local Planning Authority. The details of the lighting shall include design, the exact position, light intensity and spillage and be illustrated on the associated landscaping plans for that phase or sub phase. The lighting shall be installed in accordance with the approved details prior to the first occupation of any part of the phase or sub-phase to which it relates. The approved lighting shall be retained in accordance with the approved details.

The detailed design for the footway shall include a link to the existing footpath south of Oast View. A timetable shall be submitted for registering the land as highways land. Thereafter best endeavours shall be used to implement the timetable and deliver the link.

- 8 Prior to the occupation of any residential unit, a Parking Management Plan for the development shall be submitted to and approved in writing by the Local Planning Authority. The Parking Management Plan shall include details of the allocation of spaces to individual dwellings, visitor parking, management of the provision for the extra care units and arrangements for monitoring and reviewing the plan. The Parking Management Plan shall thereafter be implemented in accordance with the approved details prior to first occupation of the development.
- 9 Prior to the occupation of any flat details of secure, enclosed and covered cycle storage facilities for each flat shall be submitted to and approved in writing by the Local Planning Authority. The approved cycle storage shall thereafter be constructed in accordance with the approved details and made available for use prior to first occupation the flats to which it relates.
- 10 Notwithstanding the approved plans, no development above foundation level shall take place until, details of the refuse and recycling storage for apartment blocks A,B and C have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details prior to the occupation of those units and retained

thereafter.

- 11 No development shall take place until detailed reptile, bats, birds, badgers, mitigation strategies and management plans shall also be submitted for written approval. The development shall be carried out in accordance with the approved details.
- 12 In this Condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs a) and b) below shall have effect until the expiration of 5 years from the date of occupation of the building for its permitted use.
  - a) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be pruned other than in accordance with the approved plans and particulars, without the written approval of the Local Planning Authority. Any pruning approved shall be carried out in accordance with British Standard 3998 (Tree Work).
  - b) If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time as may be specified in writing by the Local Planning Authority.
  - c) The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this Condition and the ground levels within those areas shall not be altered, nor shall any excavation be made without the written consent of the Local Planning Authority.
- 13 No development shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include amongst other matters details of: hours of construction working; measures to control noise affecting nearby residents; wheel cleaning/chassis cleaning facilities; dust control measures; pollution incident control and site contact details in case of complaints. The construction works shall thereafter be carried out at all times in accordance with the approved Construction Environmental Management Plan, unless any variations are otherwise first submitted to and approved in writing by the Local Planning Authority.
- 14 Unless otherwise agreed by the Local Planning Authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence until conditions 15 to 18 have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified in writing by the Local Planning Authority until condition 5 has been complied with in relation to that

contamination.

- 15 A desk top study, investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, including risks to groundwater, whether or not it originates on the site. The scheme shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of the development. The desk study, investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report shall be submitted to and approved by the Local Planning Authority prior to the commencement of development. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to:
  - human health
  - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes.
  - adjoining land,
  - groundwaters and surface waters,
  - ecological systems,
  - archaeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

- 16 A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and submitted to and approved in writing by the Local Planning Authority prior to commencement of the development. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

- 17 The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of any development (other than development required to enable the remediation process to be implemented) unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given not less than two weeks written notification prior to the commencement of the remediation scheme works.

Following completion of the measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the

remediation carried out must be produced, and submitted to and approved in writing by the Local Planning Authority prior to the bringing into use of the development.

- 18 In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 15, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 17, which is subject to the approval in writing of the Local Planning Authority.

Following completion of the measures identified in the approved remediation scheme a verification report providing details of the data that will be collected in order to demonstrate that the works set out in condition 3 are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition 18.

- 19 No development shall take place until a scheme showing details of the disposal of surface water, based on sustainable drainage principles, including details of the design, implementation, maintenance and management of the surface water drainage scheme have been submitted to and approved in writing by the Local Planning Authority.  
Those details shall include (if applicable):
- (i) a timetable for its implementation, and
  - (ii) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.

Reason: To manage surface water during and post construction and for the lifetime of the development.

- 20 No development shall take place until a drainage strategy detailing the proposed means of foul and surface water disposal and a implementation timetable, has been submitted to and approved in writing by, the local planning authority in consultation with the sewerage undertaker. The development shall be carried out in accordance with the approved scheme and timetable.
- 21 No drainage system for the infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approval details.

- 22 No development shall take place until an Air Quality Assessment, which shall include modelling of the impacts of traffic generated by the development upon the High Street Rainham Air Quality Management Area, has been submitted and approved in writing by the Local Planning Authority.
- 23 No development shall take place until Air Quality Mitigation Strategy has been submitted and approved in writing by the Local Planning Authority. The strategy shall be prepared in accordance with the Draft Medway Air Quality Technical Guidance. The strategy shall specify the measures that will be implemented as part of the development to mitigate the air quality impacts identified in the Air Quality Assessment approved under condition 8. The development shall be implemented entirely in accordance with the measures set out in the approved strategy.

**For the reasons for this recommendation for approval please see Planning Appraisal Section and Conclusions at the end of this report.**

### **Proposal**

Detailed planning permission is sought for the construction of 134 dwellings with associated parking, access, landscaping and infrastructure work.

The site, which is situated on the edge of Rainham, comprises an L shaped plot of land given over to open pasture, separated in the middle by a post and wire fence. Established hedgerows and tree belts surrounding the entirety of the site. Mierscourt Road defines the western boundary of the site; there is substantive level difference between Mierscourt Road and the site of approximately 1m. The north western corner of the site is overlooked by a number of properties located along Oastview. Properties further along Oastview which are located to the north east of the site are however screened by a tree belt. The land to the south and east of the site consists of open grassland under horse grazing management.

The proposed development comprises 134 dwellings, including 34 (25%) affordable units, 255 on plot parking spaces and 34 visitor spaces, 1.75ha of open space including the retention and enhancement of the existing landscape buffer that runs around the perimeter of the site.

### *Layout*

The proposed layout is structured around a formal street hierarchy, with a primary vehicular access route running east/west through the site and shared surface roads and private drives taken from this. The primary access route is a two-way, tree lined boulevard, with footpaths either side. A village green is proposed as a focal point visible from the site access. The primary access route wraps around the village green. Shared surface materials are proposed to delineate the space. The village green is given further definition by a landmark three storey apartment building acting as vista end stop.

## Access

Access is proposed to be provided as a simple 'T' junction onto Mierscourt Road. A pedestrian footpath is proposed along Mierscourt Road (the western boundary of the site). In addition the applicants are proposing to provide a new pedestrian crossing island on Mierscourt Road to provide access to the west side of Mierscourt Road and Rainham town centre beyond. A pedestrian link is proposed from the site to the existing bus stop situated on Mierscourt Road.

## Built Form

The house types are taken from Redrow's Heritage Collection Range. These comprise two and two and half storey detached, semi detached and terraced dwellings, whose appearance is inspired by 1930's Arts and Craft housing. In addition three apartment blocks are proposed. Again these have been designed in accordance with the Arts and Crafts aesthetic with hipped roof arrangements and materials and detailing taken from the Heritage Range. Dual aspect dwellings are proposed on prominent corners as nodal buildings.

The proposed housing mix is as follows:

Dwelling Type	Private	Shared Ownership	Affordable Rent	Total
1 Bed	6			6 (4%)
2 Bed	12	3	18	33 (25%)
3 Bed	20	11		31 (23%)
4 Bed	57	2		59 (44%)
5 Bed	5			5 (4%)
<b>Total</b>	<b>100</b>	<b>16</b>	<b>18</b>	<b>134 (100%)</b>

## Landscaping

The landscaping strategy seeks to maintain the landscape character of area through the retention of existing vegetation and planting of additional landscape buffers around the site and along Mierscourt Road in particular. Within the site street trees are proposed along the main boulevard. Soft landscaping is also proposed within the parking courts.

The open space provision comprises 0.07ha of formal open space in the form of the village green and 0.05ha of informal open space. In addition 1.67ha of semi-natural open space is proposed although this is given over to structural landscaping, habitat creation and accommodating the sustainable urban drainage features and as such is not available for recreational purposes.

In respect of hard landscaping the key nodal points are delineated by a change in materials (block paving). Similarly prominent parking courts are softened by a change in material (block paving).



## Site Area/Density

Site Area: 5.4 hectares (13.3 acres)

Site Density: 25 dph (10 dpa)

## Relevant Planning History

**Case ref:** MC/15/3385 Town and Country Planning Act (Environmental Impact Assessment) (England and Wales) Regulations 2011 - request for residential development

**Decision** EIA not required

**Decided** 14/10/2015

## Representations

The application has been advertised on site and in the press and by individual neighbour notification to the owners and occupiers of neighbouring properties. Following the receipt of revised layout and some supporting technical information the application was readvertised.

The Environment Agency, Natural England, Highways England, NHS, Medway Fire Service, Kent Police, EDF Energy, Scotia Gas Networks, Southern Water, Kent County Council Ecology, Kent County Council Archaeology, Kent Wildlife Trust and the Rainham, Gillingham and Chatham Amenity Society.

**Environment Agency** has raised no objections to the development subject to the imposition of conditions concerning unidentified contamination and surface water drainage systems.

**Natural England** has advised that the application site falls within close proximity to the Medway Estuary and Marshes Special Protection Area (SPA) which is a European designated habitat. They have advised that the proposed residential development is likely to increase recreational pressure upon the SPA, which in combination with other developments, is likely to have a significant detrimental effect upon the designated habitat. However they have noted that if the development was to provide effective access management measures, by contributing to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy, significant effects upon the designated habitats would be unlikely to result from the development.

**Highways England** has raised no objections.

**Southern Water** has confirmed that they cannot accommodate the needs of the development without the development providing additional infrastructure. They have therefore requested that, should permission be granted a prior to commencement condition be attached requiring a foul and surface water drainage strategy and an implementation timetable. They have also requested an informative advising that a formal agreement with Southern Water concerning the provision of infrastructure is required.

**Scotia Gas Networks** have highlighted that there is gas main near the site and that safe digging practices must be used where necessary.

**NHS** has requested a financial contribution towards increasing capacity at local health care facilities to accommodate the additional demand generated by the development.

**Kent Police** have confirmed that the proposals have sought to apply the Crime Prevention Through Environmental Design (CPTED) principles, and thereby raise no objections. They have requested to meet with the applicants to discuss Secure By Design (SBD) should the application be approved.

**Kent County Council Ecology** responded initially requiring the submission of further protected species (badgers and dormice) survey information. They also sought clarification in respect of the landscaping and ecology mitigation measures proposed. Further information was provided and they confirmed no objection subject to conditions securing the proposed ecology mitigation measures.

**6 letters of support** have been received

**479 letters of objection** have been received raising the following summarised concerns:

#### Traffic

- Mierscourt Road and A2 have insufficient capacity to accommodate additional traffic generated by the proposed development.
- Transport Assessment is unrepresentative of existing situation and likely impact of the development.
- Mierscourt Road is illegally used to access M2 via Farthing Corner services; this situation will be further exacerbated by the development.
- The application includes land historically earmarked for Rainham relief road.

#### Road Safety

- Mierscourt Road has a poor safety record (poor visibility, insufficient width for passing vehicles) these issues will be made worse by increased traffic.
- There is poor pedestrian connectivity to and from the application site.

#### Public Transport

Insufficient capacity on trains to accommodate additional demand generated by the development.

#### Parking

- Development will provide insufficient parking on site to meet the demands generated by the development.
- Development will cause additional parking on Mierscourt road, giving rise to road safety risks.
- There is insufficient parking in Rainham town centre to accommodate the development.

#### Local Services

Local services and facilities are already over capacity and cannot accommodate the additional demand that will be generated by the development. Particular concerns have been highlighted in respect of:

- Schools and nurseries
- GP surgeries
- Medway Hospital
- Train services (including the capacity of the station car park)

#### Landscape

- The development will have a detrimental impact upon rural landscape surrounding Rainham (the Kent Fruit Belt).
- The development is contrary to Policy BNE34 as the site is designated Area of Local Landscape Importance.

#### Ecology

- The site supports a wide range of protected and unprotected species which will be harmed by the development.
- Insufficient/incomplete survey information has been provided in support of the application.
- The proposed mitigation measures will not effectively mitigate the impacts of the development.
- The construction period will have a detrimental impact upon protected species.

#### Agricultural Land

The development will result in the loss of Best and Most Versatile Agricultural Land.

#### Flood Risk and Drainage

- Existing foul drainage infrastructure is unable to cope with additional demand created by the development.
- The proposed surface water drainage arrangements will create the potential for flooding of Oast View properties.
- Surface water flooding has occurred in the past at Cherry Tree Road.

#### Air Quality

Increased traffic will have a detrimental impact upon the Rainham Air Quality Management Area.

#### Amenity

- The proposed apartment blocks will result in overlooking and overshadowing/loss of light.
- The kennels are an existing source of noise pollution.
- Construction period will have a detrimental impact of residential amenity.

#### Design

The proposed apartment blocks are out of keeping with the character of the area.

#### Sustainable Development

- The proposed development is unsustainable.
- The development will have a detrimental impact upon Rainham town centre

(insufficient parking will result in less trade).

- Brownfield land should be developed before greenfield land.
- Cumulative impacts of developments nearby need to be considered.

### Procedural Issues

- Government policy should not override local policy and community concerns.
- The Council has not complied with regulatory requirements in respect of consultation.
- The applicants have undertaken insufficient consultation.
- Recommendation for approval would need to be referred to SoS as it is departure from the development plan.

All other matters raised not listed above are non material.

### **Development Plan**

The Development Plan for the area comprises the Medway Local Plan 2003. The policies referred to within this document and used in the processing of the application have been considered against the National Planning Policy Framework 2012.

### **Planning Appraisal**

#### Principle

The application site is situated on land that is outside of urban and rural settlement boundaries as defined on the proposals map to the Medway Local Plan 2003 (the Local Plan), and is thereby within the 'countryside' and is subject to Saved Policy BNE25 'Development in the Countryside'. The application site is also situated on land which is defined on the proposals map as an 'Area of Local Landscape Importance' (ALLI). The proposals are thereby subject to Saved Policy BNE34 'Areas of Local Landscape Importance'.

As is discussed in detail under the Landscape and Visual section below it is considered that the application proposals conflicts with policies BNE25 and BNE34, and are thereby contrary to the Development Plan in-principle.

Having established that the application proposals are contrary to the Development Plan it is necessary to consider whether other material considerations, specifically the relevant policies in the NPPF, indicate that the application should be approved.

Paragraph 6 of the NPPF states that *"the purpose of the planning system is to contribute to the achievement of sustainable development"*. Paragraph 6 says that the policies in paragraphs 18 to 219, *"taken as a whole, constitute the Governments view of what sustainable development in England means in practice for the planning system"*. Paragraph 7 identifies *"three dimensions to sustainable development: economic, social and environmental"*. The "social role" is *"supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations ..."*. Paragraph 8 says that these three roles are *"mutually dependent"*.

Paragraph 197 says that *“[in] assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development”*.

### *Housing Land Supply*

Section 6 of the NPPF, which contains paragraphs 47 to 55, is entitled “Delivering a wide choice of high quality homes”. Paragraph 47 states:

*“To boost significantly the supply of housing, local planning authorities should:*

- use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in [the NPPF], including identifying key sites which are critical to the delivery of the housing strategy over the plan period;*
- identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% ... to ensure choice and competition in the market for land. ... ;”*

Paragraph 49 states:

*“Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.”*

The 2014/15 Authority Monitoring Report (AMR), published in December 2015, identifies the current five-year housing land supply position in Medway. The AMR includes a ‘housing land trajectory that sets out the expected delivery rates of identified housing development sites in Medway.

Over the next five years (2015/16 – 2019/20) the trajectory identifies 5587 dwellings coming forward. It should be noted that the trajectory set out in the 2014/15 AMR has a base date of 31st March 2015 and does not take account of changes since then.

As part of the evidence base for the preparation of the replacement Local Plan the Council has commissioned a Strategic Housing and Economic Needs Assessment (SHENA) in line with the guidance contained within the NPPF and the PPG. The SHENA suggests that the annual full objective assessment of housing need (FOAN) within the Councils area will be of the order of 1,281 dwellings per annum, a figure 28% higher than interim figure of 1,000 that has been used by the Council since 10 June 2014.

The Council accepts that it cannot demonstrate a 5 year housing land supply and that the shortfall is likely to be significant. This means that in the context of this application and having regard to the provisions of paragraph 49 of the NPPF, the housing supply policies in the MLP cannot be considered up-to-date, and therefore the presumption in favour of sustainable development at paragraph 14 of the NPPF is engaged.

### *Out-of-date policies*

In light of the above it is necessary to consider whether BNE25 and BNE34 are

relevant policies "for the supply of housing", and should therefore be treated as out-of-date for the purposes of this planning application.

A recent Court of Appeal decision ([2016] EWCA Civ 168) has provided guidance on this question, explaining that: *"A 'relevant' policy here is simply a policy relevant to the application for planning permission before the decision maker - relevant either because it is a policy relating specifically to the provision of new housing in the local planning authority's area or because it bears upon the principle of the site in question being developed for housing"*.

To this end it is considered that both BNE25 and BNE34 are relevant policies for the supply of housing and as such should be considered out-of-date.

However, whilst these policies are out-of-date this does not mean that they are irrelevant in the determination of this planning application. Paragraph 46 of the Court of Appeal decision referred to above explains: *"Neither of those paragraphs of the NPPF [14 and 49] say that the development plan policy for the supply of housing that is 'out-of-date' should be given no weight, or minimal weight, or indeed, any specific amount of weight. They do not say that such policy should be ignored or disapplied."*

Rather it is for the Council, as the decision taker, to exercise its planning judgement in terms of the weight to be afforded the out-of-date policies when the presumption in favour of sustainable development has been engaged. Paragraph 47 of the Court of Appeal decision goes on to explain:

*"One may, of course, infer from paragraph 49 of the NPPF that in the Government's view the weight to be given to out-of-date policies for the supply of housing will normally be less than the weight due to policies that provide fully for the requisite supply."*

However:

*"The weight to be given to such policies is not dictated by government policy in the NPPF... It will vary according to the circumstances, including, for example, the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the local planning authority to address it, or the particular purpose of a restrictive policy – such as the protection of a "green wedge" or of a gap between settlements. There will be many cases, no doubt, in which restrictive policies, whether general or specific in nature, are given sufficient weight to justify the refusal of planning permission despite their not being up-to-date under the policy in paragraph 49 in the absence of a five-year supply of housing land. Such an outcome is clearly contemplated by government policy in the NPPF. It will always be for the decision-maker to judge, in the particular circumstances of the case in hand, how much weight should be given to conflict with policies for the supply of housing that are out-of-date. This is not a matter of law; it is a matter of planning judgment"*

In light of the significant shortfall in housing land supply, it is considered that only limited weight can be afforded BNE25 and BNE34 in the planning balance in this instance.

As such it is considered that the main issue in the determination of this planning application are those set out in NPPF paragraph 14, namely whether *"any adverse impacts of [granting planning permission] would significantly and demonstrably outweigh the benefits, when assessed against the policies in [the NPPF] taken as a whole"*. It is thereby necessary to assess the planning application against all the relevant policies of the NPPF before completing an overall assessment of impacts and benefits.

### Landscape & Visual

As noted above, the application site is subject to policies BNE25 and BNE34 both of which are broadly concerned with landscape impact. Whilst these are out-of-date and to be afforded limited weight in the planning balance, they remain relevant to the determination of this planning application. It is thereby necessary to consider the extent to which these policies are consistent with the relevant policies NPPF, before assessing the proposals against these policies in detail.

The NPPF sets out its core principle in respect of landscape at bullet point five of paragraph 17 stating that planning should *"take account of the different roles and character of different areas...recognising the intrinsic character and beauty of the countryside"*. NPPF paragraph 109 goes on to state that: *"the planning system should contribute to and enhance the natural and local environment by: protecting and enhancing valued local landscapes"*. NPPF paragraph 113 goes on to explain: *"Local planning authorities should set criteria based policies against which proposals for any development affecting protected wildlife or geodiversity sites or landscape areas will be judged."*

Policy BNE25 is considered to be broadly compliant with the NPPF landscape policies. Policy BNE25 states that development in the countryside will only be permitted if it is in accordance with one of seven criteria. The first of these criteria reflects directly paragraph 109 concern for the "intrinsic character and beauty of the countryside".

The application proposals do not comply with any of the BNE25 criteria, specifically:

- i. the development would not maintain or enhance the character, amenity or functioning of the countryside (this issue is discussed in more detail under the landscape and visual assessment below);
- ii. the site is not allocated for residential development;
- iii. the development is not essentially demanding of a countryside location;
- iv. the development does not comprise the re-use or adoption of an existing building;
- v. the development does not comprise the re-use or redevelopment of an existing built-up area;
  
- vi. the development does not comprise the rebuilding of a modest extension or annex to a dwelling;
- vii. the development does not comprise a public or institutional use for which a countryside location is justified;

The application proposals thereby conflict with Policy BNE25.

Policy BNE34 states that:

*"Within an Area of Local Landscape Importance, development will only be permitted if:*

- i. it does not materially harm the landscape character and function of the area; or*
- ii. the economic and social benefits are so important that they outweigh the local priority to conserve the area's landscape.*

*Development within an ALLI should be sited, designed and landscaped to minimise harm to the area's landscape character and function."*

The application site falls within the Mierscourt/Meresborough character area. The character of this area is described in the RJ to the policy as:

*"Area of traditional Kentish farm landscape with country lanes on the eastern periphery of the borough."*

The function of the Mierscourt/Meresborough character area is described as follows:  
*"It is important as a buffer zone, helping to counteract outward pressure of urban sprawl and maintaining the separation of settlements. It is a continuation of adjacent areas in Swale Borough which are subject to a settlement separation policy in the Swale Borough Local Plan. ALLI designation is considered consistent with the Kent Structure Plan policy NK2, restricting the outward expansion of the urban area onto fresh land east of Gillingham, and with para. 6.15 of RPG9a, which specifically mentions the countryside north and east of Gillingham as being particularly important in the context of urban fringe land providing valuable countryside and recreational opportunities."*

It is also necessary to have regard to the Medway Landscape Character Assessment, March 2011 (MLCA) which provides detailed guidance on landscape character and is a material consideration in the determination of this planning application. The MLCA identifies the application site as located within Moor Street Farmland Landscape Character Area. This area is characterised by undulating landscape of orchards and arable farmland; small, medium scale mixed farmland enclosed with shelter belts and hedges. The LCA also describes the overall condition of this area as poor, subject to many detracting features, with trend away from traditional orchards towards horse paddocks and equine activity.

### *Analysis*

The site is a fairly secluded and gently sloping site well screened by existing shelter belt vegetation. Whilst the site does not contain orchards, it retains an open, undulating rural character, typical of the Kentish farm landscape. The application site is thereby considered to be typical of the Mierscourt/Meresborough character area in both character and function.

It is also considered that the site is fairly typical of the Moor Street Farmland LCA. However it is noted that the application site is fairly intact and in reasonable condition with relatively few detracting features; to this end the site departs from the LCA which describes the overall condition of the Moor Street Farmland LCA as poor; the site



comprises a good example of Kentish Farmland. It is noted that the submitted Landscape and Visual Impact Assessment assesses the site as having a positive contribution to the local landscape character (paragraph 2.4) and also as having good visual amenity with few incongruous elements (paragraph 2.7.1).

The proposed development comprises a significant change in the landscape character of the site. Whilst the retention of the existing vegetation and additional planting will go some way to reducing the landscape impact of the proposed development, it clearly cannot entirely mitigate against the significant adverse landscape effects. Furthermore, given that the application site comprises an area of traditional Kentish landscape that is reasonably intact and in good condition, the significance of the landscape effects are considered of greater importance.

With regard to views from the surrounding area, these are fairly restricted. The most significant visual impacts will be from the residential properties to north of site. It is acknowledged by the applicants that this will be substantial. There will also be a moderate impact for the residential properties to the west of site, the farmsteads to south of site and from Mierscourt Road. However from the other public vantage points, the footpaths to north east and south and Meresborough Road, the visual impact is expected to be slight.

However, it is considered that the retained vegetation and additional planting will have a benefit in screening the development and thereby mitigating the visual impact, particularly from the public vantage points. Subject to agreeing more detail regarding the retention and management of boundary hedgerows and the new planting proposals, the adverse visual (as opposed to landscape) effects are considered to be manageable through mitigation.

### *Conclusion*

The application proposals will very clearly entirely change the character and function of the application site. The site will go from a rural Kentish landscape, typical of the Mierscourt/Meresborough character area, to a suburban residential estate. It must therefore be concluded that the application proposals will give rise to significant harm to Mierscourt/Meresborough ALLI. The proposals are therefore contrary to the first clause of Policy BNE34.

The second clause requires a planning judgement to be made as to whether the economic and social benefits of the additional housing proposed outweigh the harm to the landscape character and function of the application site. As discussed above, the harm caused by the proposed development to the area's landscape character and function is demonstrably significant. However the housing proposed would make an important contribution towards meeting Medway's acute housing needs, and would thereby give rise to significant and important social and economic, benefits.

The planning judgement that is required by the second clause of BNE34 must be undertaken with reference to the supporting text of the policy. It must be noted that ALLI designations are considered "*locally significant landscapes*" (paragraph 3.4.104). It is emphasised that there is a need to "*protect the landscape character and functions of each of the designated ALLIs*" (paragraph 3.4.104). To this end the

Council has consistently upheld the ALLI landscape designation, including in the very recent past where the housing land supply shortfall has been acknowledged. In summary the local priority to conserve the area's landscape, that is enacted through policy BNE34, has been and continues to be very significant.

Given the very significant local priority to conserve the ALLI designations, it is considered that this is not outweighed by the social and economic benefits of the proposed housing. The application proposals are therefore considered contrary to the second clause of Policy BNE34.

This notwithstanding, it is noted that the proposed development has been sited, designed and landscaped, specifically to minimise the harm to the areas landscape character and function. This is discussed in more detail under the design section below.

As noted above, the applications proposals are considered contrary to Saved Policies BNE25 and BNE34. It is also considered that they fail to wholly comply with NPPF paragraph 17 (bullet point 5) and paragraph 109. The weight to be attached to these conclusions is set out in the planning balance section below.

#### Agricultural Land

The site comprises some 5.4 ha (13.3 acres) of open agricultural land, which has been laid to grass for many years and used for grazing, although historically (for example in 1960, based on aerial imagery) it was used as orchards. The applicants have undertaken soil surveys which confirm that the land is Grade 2 'very good quality'. The site thereby comprises 'best and most versatile' agricultural land.

Local Plan Policy BNE48 'Agricultural Land' is not a saved policy so is not relevant to the determination of this planning application. In the absence of a development plan policy reference should be made to national policy, specifically paragraph 112 of the NPPF which states: "*Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of higher quality.*"

The Government has also reaffirmed the importance of protecting our soils and the services they provide in the Natural Environment White Paper The Natural Choice: securing the value of nature (June 2011), including the protection of best and most versatile agricultural land (paragraph 2.35) (Grades 1, 2 and 3a). Natural England recognises agricultural land as an important national resource in its Technical Information Note TIN049 (Agricultural Land Classification: protecting the best and most versatile agricultural land, 19 December 2012). Natural England states that "*High quality agricultural land is valued because of its important contribution to food production, and it also offers much greater potential than poorer land for growing alternative fuel/energy crops*". Natural England observes that land protection policy "*is relevant to all planning applications, including those on smaller areas but it is for the planning authority to decide how significant are agricultural land issues ...*"

The term significant is not defined; however given the size of the application site it is considered that the proposals do comprise a 'significant development of agricultural land'.

Considering whether the loss of best and most versatile agricultural land is necessary, it is noted that Medway's housing land supply requirements are considerable and as such will certainly require the loss of agricultural land. Specifically it should be noted that there is insufficient brownfield land within Medway to accommodate all, or even the majority of the Council's housing requirement over the coming years.

Finally considering whether there is alternative lower grade land available, it is noted that the MAFF 1:250,000 agricultural land classification map indicates that large parts of the land adjoining the Medway urban area are likely to be best and most versatile agricultural land. It is therefore considered unlikely that meeting Medway's housing land supply requirements can be accommodated on agricultural land of Grade 3a or lower.

However Natural England advises that the MAFF 1:250,000 agricultural land classification map is indicative only and should not be used for development control decisions as the actual grade of the land may be considerably different. It is noted that the MAFF mapping indicated that the application site was Grade 1. However in the absence of detailed surveys covering all of the land around the Medway urban area it is necessary to make assumption based upon the best available evidence, which in this instance is the MAFF mapping.

In summary, given the scale of Medway's housing requirement it is considered that the loss of agricultural land is necessary and, despite the uncertainty concerning the availability of lower grade agricultural land around Medway, it is unlikely that the development can be accommodated on lower grade land elsewhere. It is thereby considered that the application proposals do not conflict with NPPF paragraph 112.

## Transport

### *Traffic Impact*

The highways impact of the development is a key concern for local residents who have expressed the view that the surrounding highway network cannot effectively accommodate the traffic generated by the development.

Saved Policy T1 requires the highway impact of developments to be assessed, and states that development will only be permitted where several conditions are met, including that *"the highway network has adequate capacity to cater for traffic which will be generated by the development"*. Paragraph 32 of the NPPF similarly requires highways impacts to be assessed by way of *"a Transport Statement or Transport Assessment."* Paragraph 32 goes on to require that *"Plans and decisions should take account of whether...improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual [after mitigation] cumulative impacts of development are severe"*.

It is considered that paragraph 32 has a different emphasis to Policy T1, in that it is focused upon 'severe impacts' rather than 'adequate capacity'. The term 'severe' is not defined in the NPPF or NPPG, and as such there is some ambiguity around how it should be tested. It should be noted that Inspectors have not always taken a capacity constraint to be a severe impact. As ever it is a matter of planning judgement with regard to be had to the particular circumstances of a development and the surrounding highway network.

Given the different emphasis between Policy T1 and NPPF paragraph 32 it is important to emphasise that NPPF paragraph 215 states *"due weight should be accorded to relevant policies in existing plans according to their degree of consistency with this framework"*.

In accordance with Saved Policy T1 and paragraph 32, a full Transport Assessment (TA) was submitted in support of the planning application.

The TA uses the TRICS trip generation database to estimate that the proposed residential development could be expected to generate up to 71 total vehicle trips in the morning peak hour and up to 68 total vehicle trips in the evening peak hour (arrivals and departures). These trips reflect specific adjustment for the affordable housing component and so are subject to such provision. Across the entire day it could be expected that the proposed development would generate up to 307 arrivals and 322 departures, which equates to around 26 arrival trips and 27 departure trips per hour on average. It is predicted that the development would also generate up to 30 trips on foot and 9 trips on public transport during each peak period.

The Transport Assessment uses Census data to identify the work locations of residents in the local area. This indicates that 68 percent of those travelling to work by car from the site would be expected to travel south on Mierscourt Road, and 32 percent would travel north towards the junction with the A2. At this point it has been found that 25 percent would be likely to route to the west on the A2 and 7 percent would route to the east. At the signalled junction between Mierscourt Road and the A2, to the north of the site, therefore, it is expected that the total development traffic would amount to 26 vehicle movements in the morning peak and 27 vehicle movements in the evening peak. This equates to around 1 vehicle movement every 2 minutes in the peak hours.

The Transport Assessment submitted with the application uses survey data to assess existing traffic flows in the vicinity of the site and the operation of the Mierscourt Road/A2 signalised junction. The survey data indicates that there are around 860 vehicle turning movements at the junction during each peak period with up to 454 movements originating from Mierscourt Road.

The applicant's assessment of the signalised junction has been presented for year 2020 rather than starting at present day. These tests indicate that Mierscourt Road would have a 'degree of saturation' of 98% in the morning peak and 104% in the evening peak. The degree of saturation is a ratio of demand to capacity on each approach to the junction, with values over 90% typically regarded as suffering from traffic congestion. Based on the degree of saturation identified, the model calculates

that in 2020 without the development mean queues of 18 vehicles and 31 vehicles would be expected to form in the morning and evening peaks respectively.

The number of vehicle trips generated by the proposed development would, taking in to account the predicted distribution of trips on the local network, increase traffic at the Mierscourt Road/A2 signalised junction by up to 27 vehicles during each peak period, of which up to 18 would originate from Mierscourt Road and up to 13 would be turning right from the A2. This represents a modest impact of around 2%.

The applicant has thereby agreed to provide a Section 106 contribution towards improvements at the junction. This would enable the Council's Traffic Signal Engineer to improve the efficiency of the signals in two regards:

- Firstly, a more sophisticated control of the signals (MOVA technology) such that inefficient allocation of green time is reduced. This results in operational performance where green time can be reallocated between the arms.
- Secondly by using crossing detectors (PUFFIN technology) which enable the crossing times to be adjusted such that longer times are provided to cross for those who need it (such as parents with children) and shorter times for those who cross more quickly. They also detect when someone walks away from the crossing and no longer needs it. Typically this will result in modest increases in the amount of traffic that can pass through the junction, thereby increasing its capacity.

The applicants suggest that, following the introduction of these mitigation measures the residual impact upon the junction would be neutral.

Given the level of public concern regarding the traffic impact, the Council instructed a transport consultant to verify the submitted TA by undertaking an independent assessment of the proposed development (i.e. an assessment that does not rely upon the figures and data provided by the applicants). The independent assessment comprised: recalculation of the trip generation and trip distribution figures; undertaking a new traffic surveys to understand existing flows and delays on the network; and preparing new modelling for the A2/Mierscourt Road junction to understand the impact of the development.

The assessment review has largely confirmed the findings of the submitted TA, notably the key assumptions regarding trip generation and distribution, and the baseline traffic survey data have all been verified.

A different approach has been taken to modelling the A2/Mierscourt Road junction. Unlike the submitted TA, the independent assessment has firstly calibrated the junction model to reflect present day delays observed on site. Although the methodology adopted within the submitted TA is common, it hasn't specifically accounted for local conditions. The approach taken by the Council's transport consultant seeks to better reflect the particular circumstances in this instance. The independent assessment shows the junction operating at different levels of capacity than identified by the applicants.

Practical Reserve Capacity (AM Peak)	Current Baseline	Future Baseline	Future Baseline with development
Submitted TA	Not provided	(2020) -9.4%	(2020) -15.0%
Independent Assessment	-22.3%	(2021) -33.7%	(2021) -35.5%

Whilst the independent assessment does show a greater level of over capacity at the junction and a severe level of operation, in the absence of any mitigation or improvement, the worsening brought about by the proposed development is relatively minor.

Turning to the proposed mitigation measures, the Council's transport consultant advises that in the absence of very detailed surveys and modelling, it is not possible to accurately predict the precise benefits which would arise from the introduction of the traffic signal improvements proposed by the applicant. Whilst the increased levels of sophistication offered by MOVA technology are of limited benefit when junctions have reached the over capacity position, it is considered that improving the allocation of green time prior to the onset of such conditions, will delay the onset of this congestion. Furthermore, improvements to the efficiency of the pedestrian crossing facility using crossing detectors (PUFFIN technology) is likely to result in some level of increased capacity at the junction during the peak hours.

To this end the Council's transport consultant advises that the measures proposed would generally be expected to address the level of operational impact which would result from the proposed development.

It is considered that given the capacity constraints at the A2/Mierscourt Junction the proposed development does not comply with Saved Policy T1. However the weight to be afforded to this conclusion is dependent upon the consistency of the policy with the NPPF, specifically paragraph 32.

As noted above paragraph 32 is concerned with *"residual cumulative impacts of development [that] are severe"*. Given that the development will only result in a marginal increase in traffic at the junction, and that this increase in traffic will very likely be off-set by the proposed mitigation in terms of junction operation, it is considered that the residual cumulative development impact will not be severe.

Therefore, whilst the application is contrary to Saved Policy T1, the policy is inconsistent with the NPPF in this instance and can thereby only be afforded limited weight.

The application is considered acceptable on traffic impact grounds as it complies with the NPPF specifically paragraph 32.

#### *Pedestrian access*

The application proposes sections of footway around the vehicular access and pedestrian crossing islands on Mierscourt Road to connect them with the existing footway on the western side of the carriage way. These would provide pedestrian

links with the primary school to the south, bus stops on Lonsdale Drive and the play park to the north. The islands would also help to reduce traffic speeds. Should permission be granted a condition would be necessary requiring a new section of footway to be constructed on the eastern side of the carriageway, between the proposed pedestrian crossing island and the existing footway to the north. This would be subject to the applicants obtaining the permission of the landowner and an evaluation of the impact upon existing wildlife habitat that may be present in this location.

The application also proposes on-site footpaths to connect the development with the south-bound bus stop. A short section footway is proposed around the bus stop, which would provide a safe environment for passengers to wait. Again a condition is recommended requiring a shelter to be provided at this stop.

Subject to a planning condition securing the provision of pedestrian crossing islands and new sections of footway on Mierscourt Road, including raised kerbs at the bus stop, the proposed development would provide a satisfactory means of pedestrian access in accordance with Policy T3 of the Medway Local Plan.

#### *Vehicular access*

As noted above concerns have been raised regarding the safety of Mierscourt Road. Survey data indicates that the 85th percentile speed of traffic along this section of Mierscourt Road is 5-6 mph above the speed limit. It is therefore proposed to provide more visibility at the access junction - 54 metres to the south and 56 metres to the north - than would be necessary for a 30mph road. The proposal to install pedestrian crossing islands in the vicinity of the access would help to reduce traffic speeds along this section of Mierscourt Road. On this basis, the proposed vehicular access arrangements are considered acceptable and no objection is raised in respect of Policy T2 of the Medway Local Plan.

#### *Public Transport*

The site is located within easy walking distance of public transport, with local bus services operating every 20 minutes between Chatham and Hempstead Valley from Lonsdale Drive. A bus service to Maidstone, including peak hour trips, operates along Mierscourt Road, with a southbound stop on the site boundary. As noted above a condition is recommended requiring the provision of a bus shelter to enhance the attractiveness of the public transport for residents of the development.

#### *Parking & Internal layout*

The Council's Parking Standards require a minimum provision of 279 spaces for the development, including 33 spaces for visitor use. The application proposes 279 parking spaces and 72 detached or integral garages. Each house is provided with at least two car parking spaces, excluding garages (some of which are marginally shorter in length than the 7 metres specified by the Council's Parking Standards). The combined parking provision for apartment block B and C is two spaces below the Council's Standards, but still provides one parking space per dwelling and six unallocated spaces. A total of 34 visitor spaces are also provided across the site.

Overall, the proposal makes satisfactory provision for car parking and no objection is raised in respect of Policy T13 of the Local Plan.

The internal layout comprises a main spine road of around 5.5 metres in width, which would satisfactorily accommodate two-way flows and the Transport Assessment includes vehicle tracking analysis to demonstrate suitable access and turning for larger vehicles. A minor point to note is that the footway termination points adjacent to plots 64 and 66 warrant some more thought, as they do not link with these dwellings (or the private drive to plot 65).

### Ecology

Under the Natural Environment and Rural Communities Act (2006), *“Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity”*. In order to comply with this ‘Biodiversity Duty’, planning decisions must ensure that they adequately consider the potential ecological impacts of a proposed development.

NPPF Paragraph 109 states that *“the planning system should contribute to and enhance the natural and local environment by...minimising impacts on biodiversity and delivering net gains in biodiversity where possible.”*

Saved Policy BNE37 states that development that would cause a loss, directly or indirectly of important wildlife habitat of feature will not be permitted unless the development meets the following criteria:

*“(i) there is an overriding need for the development that outweighs the importance of these wildlife resources; and...*

*(iii) the development is designed to minimise the loss; and*

*(iv) appropriate compensatory measures are provided.”*

Criteria (ii) relates certain types of habitat which are not relevant in this instance.

Saved Policy BNE38 is concerned with the provision of wildlife habitats in new developments that link into wider wildlife networks.

Consistent with statutory duties Saved Policy BNE39 states that *“Development will not be permitted if statutorily protected species and/or their habitats will be harmed”* and requires conditions or obligations to be attached to permissions to *“ensure that protected species and/or their habitats are safely guarded and maintained”*.

In light of the legislative and policy requirements set out above, the applicants submitted an Ecological Appraisal Report, Protected Species Survey Report and Dormouse Survey Report in support of the planning application. In response to a request for further information the applicants subsequently submitted badger survey information, further dormice survey information and further details regarding the proposed ecological mitigation measures. The Council's ecological advisers have advised that the appropriate level of ecological survey work has been carried out.

In summary the core grassland area of the site is of limited ecological value under its current management regime, but the site boundary features hold intrinsic ecological value and have been confirmed as supporting a range of protected and notable



species, details of which are set out below.

### *Bats*

With regards to bats, three trees with bat roosting potential have been identified. Whilst the bat emergence surveys carried out identified limited bat activity, these were not within the optimal survey period and the negative result should be treated with some caution. As such, if planning permission is granted, the following bat mitigation should be secured by condition:

- Enhancement of boundary habitats (ecological design strategy);
- Sensitive lighting design in accordance with recommendations and that must demonstrate the avoidance of impacts to the identified light sensitive areas;
- The retention of trees with bat roosting potential.

Details provided by the applicants demonstrate that these mitigation measures can be effectively accommodated within the development.

### *Reptiles*

The reptile survey identified low populations of slow-worms and viviparous lizards using the boundary habitats. Details have been provided of the current and proposed extents of suitable reptile habitat and demonstrate that, with appropriate management there will be an adequate amount of habitat available to ensure long-term availability of suitable reptile habitat post development. The submission and implementation of a detailed mitigation strategy should thereby be secured by condition, if planning permission is granted.

### *Birds*

Suitable habitat for breeding birds is present around the boundaries of the site, and potentially in the grassland, depending on the timing of the hay cut. Methods to minimise the potential for impacts to breeding birds have been suggested by the applicants and it is recommended that, if planning permission is granted, these are secured by way of condition requiring a mitigation strategy.

### *Badgers*

A badger survey has been undertaken which indicates a sett on-site. It is considered that the proposed retention and layout of the green spaces within the development are expected to minimise the potential impacts to badgers. As such the approach to mitigation is considered acceptable. It is thereby recommended that the implementation of the mitigation measures is secured by condition within the site ecological mitigation strategy, if planning permission is granted.

### *Dormice*

Assessment work has been submitted regarding the potential for dormice. This assessment demonstrates that dormice are unlikely to be present. As such a further dormice survey is not considered necessary.

In summary an appropriate level of ecological information has been submitted. Provided the proposed ecological mitigation, habitat creation and long-term management measures are secured by condition, it is considered that the proposals are in accordance with Saved Policies BNE37, BNE38 and BNE39 and the provisions of the NPPF including paragraph 109 in particular.

### *Birds Mitigation*

As the application site is within 6km of the North Kent Marshes SPA/Ramsar Sites, the proposed development is likely to have a significant effect, either alone or in combination, on the coastal North Kent Special Protection Areas (SPAs)/Ramsar sites from recreational disturbance on the over-wintering bird interest.

Natural England has advised that an appropriate tariff of £223.58 per dwelling (excluding legal and monitoring officer's costs, which separately total £550) should be collected to fund strategic measures across the Thames, Medway and Swale Estuaries. The strategic measures are in the process of being developed, but are likely to be in accordance with the Category A measures identified in the Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMM) produced by Footprint Ecology in July 2014.

The applicants have agreed to pay this tariff and have submitted a unilateral undertaking. No objection is therefore raised under Paragraph 118 of the NPPF and Policies S6 and BNE35 of the Medway Local Plan 2003.

### *Flood Risk & Drainage*

NPPF Paragraph 100 states that *"Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary making it safe without increasing flood risk elsewhere"*.

The site is situated close to an area which is considered to be at high risk of flooding from surface water, in accordance with the Environment Agency's flood risk mapping and the outputs of Medway Council's Local Flood Risk Management Strategy. This means that each year, those areas have a chance of flooding of greater than 1 in 30 (i.e. 3.3%). Although the mapping does not indicate that the site itself is at risk, runoff from those areas are likely to impact on the adjacent areas which are therefore indirectly at risk.

The submitted Flood Risk Assessment (FRA) proposes two options for the management of surface water across the site which will be split into three sub catchments. The first option proposes that both catchment's will drain via a system of surface water sewers discharging into infiltration ditches connected to soakage located in green space to the north of the site. A second option proposes individual soakaways in rear gardens and porous paving provided to drain areas of private hardstanding.

Both of these proposals are acceptable in principle subject to satisfactory soakage

test results. The submitted FRA includes results of an initial soakage test but the results at some of the trial pits across areas where infiltration is proposed are inconclusive albeit the results indicate presence of chalk at deeper depths; therefore consideration may need to be given to the use of deep bored soakaways where appropriate. It is suggested that an appropriately worded condition is attached should permission be granted.

It is also recommended that the surface water drainage system is designed to ensure that there is no flooding on any part of the site for a 1 in 30 year rainfall event and that any flows from rainfall in excess of 1 in 100 year rainfall event are managed exceedance routes that minimise the risks to people and property. Again it is suggested that appropriate technical requirements for the drainage system are secured by way of condition.

Given that the site is not within an area directly at risk of flooding, and given the measures proposed to sustainably manage surface water run-off, it is considered that the proposals comply with requirements of the NPPF, in particular paragraph 100, subject to appropriately worded conditions being attached to the permission.

#### Housing Mix

Paragraph 50 of the NPPF require local planning authorities to plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups within the community. In accordance with the NPPF, Saved Policy H10 requires the provision of a range and mix of house types and sizes on new development including smaller units of accommodation suited to the needs of one and two person households, the elderly or persons with a disability as well as housing that can easily be adapted for such use in the future.

It is noted that the recently published Medway Strategic Housing Market Assessment (November 2015) includes an analysis of existing stock provision within Medway. This analysis confirms that Medway has a similar proportion of 1 bed (10%), 2 bed (25%), 4 bed (13%) and 5 bed (3%) properties when compared to the wider Kent context. However it is also noted that Medway has a higher proportion of 3 bed properties (49%) when compared with England (41%), South East (39%) and Kent (40%). The SHMA notes that the delivery of different sizes of market housing will in the most part be led by the market itself.

The application proposals include a range of 1 - 5 bed units, the largest proportion being 4 bed units (44%), 23% 3 beds, 25% 2 beds and 4% being given over to both 1 bed and 5 beds. Given the character of the surrounding area is predominantly larger, family housing it is considered entirely appropriate that the development reflects this. It is thereby considered that the development is in accordance with Policy H10 and NPPF paragraph 50.

#### Affordable Housing Mix

Paragraph 50 of the NPPF support local planning authorities requiring on site provision of affordable housing where there is a need. Saved Policy H3 states that where the need has been identified, affordable housing will be sought as a proportion

of residential developments of substantial scale. With regard to need the Guide To Developer Contributions SPD makes reference to the 2009 North Kent Strategic Housing Market Assessment and thereby sets a target to seek at least 25% of homes to be affordable homes on any site meeting the Council size thresholds. The more recent 2015 SHMA confirms that there is a continued significant need for affordable housing in Medway and supports the requirement for 25% affordable housing.

The Council's Guide To Developer Contributions SPD (2014) requires the following in relation to tenure and affordable housing mix, and should be considered a starting point for any development:

- Where the number of affordable units to be provided is greater than 10, a tenure mix of 60% affordable rent and 40% intermediate affordable housing will be sought.
- In terms of the size mix of affordable unit on a site, the Council will generally seek to achieve the approximate following mix,
  - 40% 1-bedroom properties
  - 30% 2-bedroom properties
  - 20% 3-bedroom properties
  - 5% 4-bedroom properties
  - 5% 5-bedroom properties

The affordable housing mix is summarised below:

Dwelling Type	Shared Ownership	Social Rented	Total
1 Bed	0	0	0 (0%)
2 Bed	3	18	21 (62%)
3 Bed	11	0	11 (32%)
4 Bed	2	0	2 (6%)
Total	16	18	34 (100%)

The proposals provide 16 (47%) shared ownership units and 18 (53%) social rented units and is not therefore in accordance with the Council's requirements.

The mix in respect of unit size is also not in accordance with the Council's requirements. Whilst it is acknowledged that it would be inappropriate in this suburban location to require 40% of the affordable housing to be provided as one-bedroom units it is considered that the proposed mix is insufficiently diverse, with too higher proportion of 2 bed units.

In light of the above further negotiations will be undertaken with the applicant, with a view to securing a more appropriate mix of affordable units by way of the Section 106 Agreement.

## Design

The Government attaches great importance to the design of the built environment. Good design is considered a key aspect of sustainable development and is indivisible from good planning. Paragraph 58 of the NPPF requires that developments should function well and add to the overall quality of the area over the lifetime of the development as well as optimise the potential of the site to accommodate development. Paragraph 64 thereby states that "permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions".

In accordance with the NPPF, Saved Local Plan Policy BNE1 'General Principles for Built Development' requires the design of development to be appropriate in relation to the character, appearance and functioning of the built and natural environment.

In accordance with the requirements paragraph 58 of the NPPF Saved Policy BNE6 requires landscaping schemes to enhance the character of the locality.

## Assessment

Notwithstanding the issues of principle which are addressed elsewhere in this report, the key design challenges in respect of this scheme are ensuring that the development is effectively integrated into the areas built and natural environment.

In assessing the scheme consideration has been given the character of the surrounding area and how this can inform the design approach to this site. It is considered that whilst the residential areas are pleasant, they do not have a particularly coherent built character, which can be drawn upon to inform the architectural approach adopted. However as noted above the site and its immediate area are considered to make a positive contribution to local landscape character. The hedgerows and mature, mainly poplar, trees are positive features on the eastern, southern and western boundaries of the site. Part of the northern boundary is abutted by 'the plantation'- a belt of woodland. Within its boundaries, the site itself has a pleasant rural quality. Views from within the site to the town of the church at Rainham are a positive feature.

## *Edges of the Site*

Within this context it is supported that the development is to be pulled back from the edges of the site in order to allow hedgerows and trees to be retained. It is considered that this approach will help tie the development into the landscape and further will assist in screening the development, mitigating some of the damage to the landscape character.

However in response officers comments on the initial scheme that the layout of the site did not in many places allow easy access to maintain the hedgerows and trees on the site boundaries. Their longevity was therefore in question. In response to the concerns the applicants revised the scheme to ensure that maintenance access was provided to the structural landscaping areas.

To ensure that the structural landscaped areas are properly delivered, with an appropriate mix of retained and new planting it is recommended that an appropriately worded condition is attached to the planning permission.

### *Layout*

It is also important that the scheme itself has character and distinctiveness and a sense of place.

The pre-application submission showed a relatively straightforward layout with spine roads traversing each arm of the site and meeting at a cross roads in the middle. A small village green was provided at this focal point which was further emphasised by the placement of large flat blocks (the largest buildings on the site) immediately behind. The main spine road from the entrance was given additional width and was to be tree lined throughout its length. In summary, the layout was clear and had a clear hierarchy of streets and spaces.

The scheme that was initially presented in the planning application had its entrance further north. This necessitates a crank of the main spine road within the site. The focal point of the village green had disappeared and the flat blocks sat tightly on their site with very little amenity space to ease them into the layout.

In addition it was considered that the initially submitted scheme had a lack of coherence with a relatively arbitrary juxtaposition of house types, especially the smaller types along the main east/west spine road, and a completely arbitrary mix of materials. However the distribution of the larger and more generous house types along the primary edges was supported.

In responses to these concerns the layout was redesigned. Although it was not possible to re-locate the site access for road safety reasons, the central village green was reinstated. Apartment Block A was also relocated adjacent to the village green to create a vista end stop and define the space as the heart of the scheme.

The distribution of house types has also been rationalised and it is considered that layout now has a greater coherence.

However concerns remain regarding the pallet of material both in respect of the house types and the hard landscaping. It is considered that there are too many materials proposed which will result in an incoherent scheme that militates against the establishment of a worthwhile character for the development. To this end it is recommended that if permission is granted an appropriately worded condition is attached requiring approval of the materials.

### *House Types*

As noted above the applicants are proposing to use the Redrow Heritage Range. Given that the surrounding built environment has a mixed, suburban character it is

considered that this approach is entirely appropriate.

Subject to the inclusion of appropriately worded conditions no objections are raised to the application proposals in respect of Saved Policies BNE1 and BNE6 or the relevant paragraphs of the NPPF.

### Amenity

One of the twelve core planning principles of the NPPF is that planning should secure "a good standard of amenity for all existing and future occupants of land and buildings" (paragraph 17). In addition, Policy BNE2 of the Local Plan requires all development to secure the amenities of its future occupants and to protect those amenities enjoyed by nearby and adjacent properties.

The application site is situated on land directly to the south of Oast View and thereby the development has the potential to give rise to overlooking issues. The nearest residential units are situated over 20 metres away, in accordance with best practice and the Medway Housing Design Standards. As such there are not expected to be any unacceptable overlooking issues.

With regard to the proposed layout this has also been assessed and there are no overlooking or overbearing issues, with garden sizes, and thereby back-to-back distances, in accordance with the Medway Housing Design Standards (2011) i.e. a minimum of 10 metres.

It is noted that three 3-storey apartment blocks are proposed. Block A is situated on the southern edge of the site, adjacent to the village green and blocks B and C are situated to the south of the 'plantation', a belt of woodland which provides a significant landscape buffer to the existing properties to the north. As such it is considered that there is no potential for unacceptable overlooking of the existing properties to the north of the application site. Furthermore the apartment blocks have been located to ensure that there is no unacceptable overlooking or overbearing issues for the adjacent housing units within the site.

Following the initial submission, concerns were raised that several of the proposed housing units failed to comply with the 'Technical housing standards - nationally described space standard' which were published by the Government in March 2015. Revised details were submitted and these are now in accordance with the Government's housing space standards.

In summary the application proposals are considered to secure the amenities of its future occupants in compliance with Saved Policy BNE2, the Medway Housing Design Standards and national Technical Housing Standards.

### Open Space

NPPF Paragraph 73 recognises that *"access to high quality public open space and opportunities for sports and recreation can make an important contribution to the health and well-being of communities"* and thereby goes on to support planning

policies that set out the need for open space, sports and recreation facilities and identify opportunities for new provision. In accordance with this national policy requirement Saved Local Plan Policy L4 sets out the requirements for the provision of open space in new residential developments. For development in excess of 100 dwellings the standards are as follows:

- Formal Recreation (outdoor sports provision) - 1.7 hectares per 1000 population; and
- Casual Recreation and Children's Play - 0.7 hectares per 1000 population.

Applied to the proposed development, and having regard to the mix of dwellings proposed which will generate approximately 430 residents, this standard equates to approximately 0.73ha (7300sqm) of formal recreation and 0.3ha (3000 sqm) of casual recreation and children's play. Whilst a total of 1.75ha of open space is proposed, this is largely given over to structural landscaping, habitat creation and accommodating the surface water drainage features. As such only 0.12ha (1200sqm) is given over to casual recreation and none is provided for formal recreation or children's play. As such the development does not comply with the requirements of Policy L4, with a shortfall in respect of formal recreation space (7300sqm) and casual recreation space and children's play space (1800sqm).

However the applicants have provided details of how they could deliver off-site improvements to the Cherry Tree Open Space, which is well situated to serve the development and will also provide benefits to existing residents in the area. A contribution has been calculated with reference to the Council's Guide to Developer Contributions (2014) and the improvements in this location are appropriate and deliverable. The contribution will also be put towards improvements at Bloors Lane allotments and outdoor sports facilities at Rainham Recreation Ground and/or Ryetop and/or Cozenton Park.

In this instance it is thereby considered that off-site improvements are an acceptable, and can overcome the none compliance with Policy L4.

#### Infrastructure & S106 matters

As noted above concerns have been raised by local residents that the development would give rise to additional demand for local services, such as education and health care, which cannot be accommodated as local facilities have insufficient spare capacity.

Policy S6 of the Local Plan states conditions and/or legal agreements should be used to make provision for additional demand for local services generated by new developments.

The Community Infrastructure Levy (CIL) Regulations 2010 provide that in relation to any decision on whether or not to grant planning permission to be made after 6 April 2010, a planning obligation (a s106 agreement) may only be taken in to account if the obligation is:

- i. necessary to make the development acceptable in planning terms;



- ii. directly related to the development; and
- iii. fairly and reasonably related in scale and kind to the development.

The Approved Guide to Developers Contribution (2014) sets the Council's detailed approach towards ensuring that the demands generated by new developments is properly provided for by way of financial contributions made by the developer towards the provision of new and improved infrastructure and services. The Guide sets out comprehensive advice on how financial contributions will be calculated in respect of a broad range of different services.

In accordance with Guide to Developer Contribution the following contributions have been sought in respect of this application:

- i. 25% Affordable Housing: 34 dwellings
- ii. Education comprising:
  - i. Nursery School @ £8320 per pupil place (£97,177.60)
  - ii. Primary School @ £8320 per pupil place (£242,611.20)
  - iii. Secondary School @ £11,960 per pupil place (£244,223.20)
  - iv. Sixth Form @ £11,960 per pupil place (£65,780)
  - v. Total: £649,792.00
- iii. Transport (A2/Mierscourt junction improvements) comprising:
  - vi. Traffic signal equipment: £49k
  - vii. MOVA equipment (including licencing): £6.5K
  - viii. Removal of guard rail: £6K
  - ix. Civils works (including island remove and crossing widening): £42K
  - x. Sub total: £103,500
  - xi. 10% Contingency: £10,350
  - xii. Total: £113,500
- iv. Open Space: £231,714.10 (reduced from £334,110 to account for 1.75ha of on site provision)
- v. Local Health Facilities: £62,705
- vi. Birds Disturbance Mitigation: £29,960
- vii. Waste & Recycling: £20,829
- viii. Community Facilities: £18,319

These requests have been calculated in accordance with the Approved Developers Contribution Guide (2014) and based on the quantum and location of the development and are thereby considered to comply with the CIL Regulation Tests.

The applicants have agreed to all of the requested obligations and therefore no objections are raised in respect of Saved Policy S6.

Planning Balance

The appraisal that has been undertaken above demonstrates that the application proposals are contrary to the Development Plan as they fail to comply with saved policies BNE25, BNE34 and T1. However, whilst planning applications must be determined in accordance with the development plan, regard should also be had to other material considerations, including the NPPF.

Given that it is accepted that Medway does not have a five year supply of housing land, and that the shortfall is likely to be significant, NPPF paragraph 49 states that policies for the supply of housing, BNE25 and BNE34, should be treated as out of date and thereby the presumption in favour of sustainable development should be engaged.

As noted above, simply because the presumption in favour of sustainable development has been engaged, that does not mean that development plan policies relevant for the supply of housing should be ignored. Rather it is for the decision maker to decide how much weight should be afforded to them. Given that Medway's housing land supply shortfall is likely to be significant it is considered that only limited weight can be afforded to policies BNE25 and BNE34 and greater weight should be attached to the presumption in favour of sustainable development.

When determining planning applications the presumption in favour of sustainable development requires a balancing exercise to be undertaken, granting planning permission unless: *"any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole"*.

Turning first to the benefits of the development. The proposals will deliver 100 units of market housing and 34 units of affordable housing. With reference to the recently published Medway Strategic Housing Market Assessment, there is clear and demonstrable need for market housing in Medway, and an acute need for affordable housing. The application proposals must thereby be seen as a social benefit. It is also considered that the development will give rise to economic benefits, by creating employment during the construction period and subsequently the new residents increasing spending in the local economy. It is also noted that the development is in a sustainable location, providing the opportunity for residents to walk or cycle to the shops and facilities within Rainham town centre, as well as the train station. The site is also well served by bus services. As such the site is considered to be within a sustainable location which has the potential to support sustainable travel choices.

However it is also clear that the development would give rise to environmental adverse impacts. As has been demonstrated above the development would result in the loss of the best and most versatile agricultural land. Although it is considered unlikely that lower grade agricultural land could be identified to accommodate all of Medway's housing land requirement. The development would also result in the loss of an area of typical Kentish rural landscape, which is in particularly good condition. However it is noted that the structural landscaping proposed will go some way to mitigate that impact and furthermore the site has relatively limited visibility from public vantage points.

Local residents have also raised concerns that the development would give rise to adverse impacts in respect of the highway network. Whilst it is acknowledged that there are capacity constraints on the highway network, it has been demonstrated that junction improvement can be provided to accommodate the additional traffic generated by the development and as such the impact is considered to be neutral. Similarly concerns regarding the capacity of local schools and the health care facilities can be mitigated by the provision of increased capacity paid for by the applicants. It is noted that no objections have been raised by service providers.

The appraisal undertaken above, having regard to the Framework as a whole, has not identified any other adverse impacts.

In conclusion, whilst there are undoubtedly adverse impacts arising from the development, given mitigating factors that have been identified, the sustainable location of the application site, the scale of Medway's likely housing shortfall and the considerable weight the Government and the NPPF attaches to the need to "*significantly boost the supply of housing*" (NPPF, paragraph 47), it is not considered that the identified adverse impacts "significantly and demonstrably" outweigh the benefit.

It is thereby considered that the development is acceptable, despite the identified conflicts with the development plan.

#### Local Finance Considerations

There are no financial considerations relevant to this application.

#### **Conclusions and Reasons for Approval**

The proposal for 134 residential units are contrary to development plan policies BNE25 and BNE34 as the site is situated outside the settlement boundary on land designated as an Area of Local Landscape Importance. However, since the Council does not have a five year supply of housing land and has a shortfall in supply that is likely to be substantial, significant weight should be given to the NPPF in the determination of this application. Having regard to the presumption in favour of sustainable development, as required by NPPF paragraph 49, it is considered that whilst the development would have adverse impacts in respect of the loss of agricultural land and a harm to a locally valued landscape, these are outweighed by the significant social benefits and associated economic benefits of delivering 100 units of market housing and 34 units of affordable housing. It is therefore recommended that planning permission is granted subject to conditions and Section 106 agreement.

This application would normally fall to be determined under officers' delegated powers, but is being reported for Members' consideration due to the scale and significance of the scheme and the number of objections received.

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#### **Background Papers**

The relevant background papers relating to the individual applications comprise: the applications and all supporting documentation submitted therewith; and items identified in any Relevant History and Representations section within the report.

Any information referred to is available for inspection in the Planning Offices of Medway Council at Gun Wharf, Dock Road, Chatham ME4 4TR and here <http://publicaccess.medway.gov.uk/online-applications/>